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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,409	03/26/2004	Brett Ashley Roderick	JH03-182	8915

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EXAMINER

OKEZIE, ESTHER O

ART UNIT	PAPER NUMBER
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3654

DATE MAILED: 12/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/810,409	RODERICK, BRETT ASHLEY	
	Examiner	Art Unit	
	Esther O. Okezie	3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 4,5, and 6 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term “pedestal keel” and “pedestal tongues” in claims 4,5, and 6 are used by the claim to mean “a cantilever on which the bracket rests”, while the accepted meaning for pedestal is “the support or foot of a late classic or neoclassic column or the base of an upright structure” and keel meaning “the chief structural member of a boat or ship that extends longitudinally along the center of its bottom and that often projects from the bottom.” The term is indefinite because the specification does not clearly redefine the term.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being by anticipated by Griggs. It is noted that the applicant has set forth the subcombination of a tool for securing a bracket and but refers to the combination of a tool and a bracket. These claims are being treated as the subcombination.

Griggs discloses a tool capable of securing a bracket, the tool comprising:

- (a) a tool body (figures 1-4);
- (b) legs rigidly connected to said body and extending upward from said body (side elements 6 and 7; column 1, lines 55-58);
- (c) means for holding a bracket having a heel and two upright members when inserted between said legs (connector member or bar 2);
- (d) a handle extending downward from said body (1).

1. Regarding claim 2 Griggs discloses a tool wherein said handle extends downward and outward at an angle from said body (figures 1-4).

Art Unit: 3654

2. Claim 1 and 4 are rejected under 35 U.S.C. 102(b) as being by anticipated by Kellenbarger. Kellenbarger discloses a tool capable of securing a bracket, the tool comprising:

- (a) a tool body (1);
- (b) legs rigidly connected to said body and extending upward from said body (4);
- (c) means for holding a bracket having a heel and two upright members when inserted between said legs (3);
- (d) a handle extending downward from said body (2).

3. Regarding claim 4 Kellenbarger discloses a means for inserting a bracket between the legs of the tool including a wedge-shaped shaped projection (7) extending outward from said body (3).

4. Claim 1 and 8 are rejected under 35 U.S.C. 102(b) as being by anticipated by Holst. Holst discloses a tool capable of securing a bracket, the tool comprising:

- (a) a tool body (10);
- (b) legs rigidly connected to said body and extending upward from said body (16);
- (c) means for holding a bracket having a heel and two upright members when inserted between said legs (14);
- (d) a handle extending downward from said body (11).

5. Regarding claim 8 Holst discloses a utility aperture or eyelet 12 within the handle.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Griggs in view of Brodeur. Griggs meets all of the limitations of claim 1 but does not teach a ribbed handle. Brodeur discloses a joist hanger mounting tool with ribbed handle 10. Griggs and Brodeur are analogous art because they are both tools capable of securing a bracket. It would have been obvious to one of ordinary skill in the art to make the handle of Griggs ribbed so that the handle could more easily be grasped without slippage.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Griggs in view of what is old and well known. Griggs meets all of the limitations of claim 1 but does not teach a plastic tool. Plastic tools are old and well known in the subject matter area of the invention. It would have been obvious to make the out of plastic since tools made of plastic are of lighter weight.

Allowable Subject Matter

Claim 5 and 6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US-761136, US-4181295, US-2197278, US-202540.US-5383320, US-6272951 B1, US-2544492, Des. 336231.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (703) 305-0433. The examiner can normally be reached on Mon-Fri 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine A Matecki can be reached on (703) 308-2688. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3654

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

eoo

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